

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF MISSISSIPPI  
SOUTHERN DIVISION**

**UNITED STATES OF AMERICA,  
ex. rel. MITCHELL D. MONSOUR and  
WALTON STEPHEN VAUGHAN (Relators)**

**PLAINTIFFS**

**V.**

**Civil Action No. 1:16cv38HSO-JCG**

**PERFORMANCE ACCOUNTS RECEIVABLE, LLC, et al.**

**DEFENDANTS**

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**RESPONSE TO SHOW CAUSE ORDER**

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NOW COMES McHard, McHard, Anderson and Associates, PLLC, Samuel S. McHard ("McHard"), and P. Manion Anderson ("Anderson"), hereinafter the ("McHard Firm") and in response to the text order to show cause issued on February 24, 2021, states as follows:

1. On February 20, 2021 at 12:33 p.m., the Court noticed a telephonic status conference and ordered counsel for Plaintiff to place the call to the judge's chambers with all necessary counsel on the line at 10:00 a.m. on February 24, 2021. The McHard Firm placed this conference on its calendar upon receipt of the notice from the court. At no time prior to the telephonic conference to be held on February 24, 2021 had McHard or Anderson believed they had received any information further with regard to the call and had anticipated receiving a phone call just prior to the 10:00 a.m. call on February 24th per counsel from Plaintiff.
2. McHard was scheduled that morning to receive his second COVID-19 vaccination. See **Exhibit 1** attached hereto. At the time that the call was to be placed, however, McHard was attempting to participate in both the call and to follow up with his COVID vaccination

process. McHard advised Nicholas Puckett ("Puckett"), an associate who had worked on the matter, to cover the call if it came in later. Anderson believed that McHard would be able to handle the call.<sup>1</sup> When no phone call came from Plaintiff's counsel on or before 10:00 a.m. on that date, McHard proceeded with treatment, assuming the hearing would not proceed. At 10:08 a.m., Puckett received a calendar invite and joined the call; however, after Puckett joined the call and was notified that he had not entered an appearance previously would not be allowed to handle the phone call and that an order to show cause would be issued.

3. **Exhibit 2** is the "calendar invite" that was sent to parties at the McHard Firm; however, the emails were received into the junk folders of both Erica McHard and Anderson for the McHard Firm. The email received by the Sam McHard email box, as do all emails associated with the [smchard@mchardlaw.com](mailto:smchard@mchardlaw.com) email, are managed by the email administrator for the firm, Jennifer Smith. Ms. Smith was out on maternity leave, and there was a temporary assistant, Rhonda Hust, performing those duties. Upon receipt of the email to the [smchard@mchardlaw.com](mailto:smchard@mchardlaw.com) email address, Ms. Hust failed to link this email to the case and failed to forward the email to the responsible parties assigned to this matter. Instead, Ms. Hust placed the email into a subfolder entitled "not case related."
4. The email was not printed or reviewed by McHard. Therefore, McHard, was unaware that he received a calendar invite to join a phone conference, and, therefore, continued to believe

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<sup>1</sup> Anderson was previously scheduled to participate in a settlement conference on February 24 with Magistrate Myers in the matter styled 3h202, LLC v. Phlight Pharma, et al. The settlement conference with Judge Myers was cancelled at approximately 3:00 p.m. on February 23, 2021. The subject teleconference was not added to Anderson's calendar following the 3H202 settlement conference cancellation.

he would receive a telephone call from Attorney Brad Piggott to join the status conference as directed by the Court in its docket order dated February 10, 2021. See **Exhibit 3** attached.

5. McHard and Anderson and the McHard Firm apologize to the court for this error in the management of the emails and inability to timely participate in the call that occurred on February 24th and respectfully request the Court's forgiveness and that of the other participating counsel. Counsel for the McHard Firm will ensure that both Mr. McHard and Mr. Anderson are present for a telephonic status conference to be scheduled at the Court's convenience.

Respectfully submitted this 1<sup>st</sup> day of March, 2021.

*s/Samuel S. McHard*

SAMUEL S. McHARD, MSB #100295

*s/P. Manion Anderson*

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the above and foregoing has been electronically filed with the Clerk of Court, Southern District of Mississippi, using the CM/ECF filing system, which will send notification of said filing to all counsel of record.

THIS the 1<sup>st</sup> day of March, 2021.

/s/ Samuel S. McHard  
SAMUEL S. McHARD, MSB #100295